

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 91 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

THE COMMISSIONER OF INCOME-TAX

Versus

SHRI PRAMUKHLAL B. SHAH

Appearance:

MR AKIL QURESHI WITH MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 20/09/2000

ORAL JUDGEMENT

Per C. J. :-

At the instance of the revenue, the following question of law has been referred to this court under Section 156(1) of the Income tax Act, 1961:

"Whether on the facts and in the circumstances of the case, the provisions of section 17 (2) (iii) of the Income tax Act, 1961 could be attracted in respect of the loan taken by the assessee on an interest at the rate of 3% per annum"?

Learned counsel for the department very fairly brings to our notice decision of the Andhra Pradesh High Court in the case of P.V.Rajgopal vs. Union of India, 233 ITR 678.

We find that the question raised is squarely covered by the decision of the Andhra Pradesh High court against the revenue. It has been held by the Andhra Pradesh High Court that interest subsidy paid for the benefit of the employee is not 'perquisite' and, therefore, is not covered by the definition of 'salary' within the meaning of section 17 (2) (iii) of the Act.

We, therefore, answer the question in negative i.e. against the revenue and in favour of the assessee.

Reference is accordingly disposed of but with no order as to costs.

(D. M. Dharmadhikari, C.J.)

(A. R. Dave, J.)

parekh